
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

JUNIOR DOUGLAS STEVENSON and
ELBERT NERO, also known as
ALBERT NERO,

Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

No. 21476 ✓

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21484

On Appeal from the Judgment of
The United States District Court
For the District of Arizona

BRIEF FOR APPELLEE

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BRIEF FOR APPELLEE

I.

JURISDICTIONAL STATEMENT OF FACTS

A Complaint against Junior Douglas Stevenson and Elbert Nero, also known as Albert Nero, Appellants, was filed before the United States Commissioner at Tucson, Arizona, on May 31, 1966, charging Appellants with a violation of 18 U.S.C., §2312. On June 15, 1966, an Indictment was returned by the Federal Grand Jury sitting at Phoenix, Arizona. (Transcript of the Record, Volume One, Item One. Hereinafter, Volume One of the Transcript of the Record will be referred to as "RC," Volume Two of the Transcript of the Record, i.e., the

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Reporter's Transcript, will be referred to as "RT," the number following will refer to the page, and the number following "L" will refer to the line. Appellants will be referred to as Stevenson and Nero.)

The Indictment charged Nero and Stevenson with having transported a stolen motor vehicle, to-wit: a 1966 Ford Thunderbird automobile, on or about May 11, 1966, from Phoenix, Arizona, to Sonoyta, Mexico, and they then knew the motor vehicle to have been stolen. (RC Item 1.)

On June 23, 1966, by minute entry, the Indictment was forwarded to the Tucson Division of the United States District Court for the District of Arizona from the Phoenix Division.

On July 5, 1966, the Indictment was filed in the Tucson Division. On July 18, 1966, Stevenson and Nero were appointed counsel, Ralph E. Seefeldt, and were arraigned. They pleaded not guilty. On July 20, 1966, the Court set the case for trial on September 6, 1966. The case was reached for trial on September 7, 1966. In Chambers, on September 7, 1966, in the presence of Stevenson and Nero, Ralph Seefeldt made an oral motion to quash the Indictment (RT 4 L 12 to 5 L 6). No motion to continue was made on the record. The Court, Honorable C. A. Muecke, presiding, denied the motion as not timely made even though the Court permitted a hearing on it (RT 17 L 6-18). The trial was held on September 7, 1966, and the jury returned a verdict of guilty as to both Stevenson and Nero (RC Items 2 and 3).

On September 19, 1966, Stevenson and Nero were each sentenced by Judge C. A. Muecke to five years, subject to parole at any time in the discretion of the Board of Parole, pursuant to the provisions of 18 U.S.C., §4208(a)(2).

The Petition to appeal in forma pauperis was filed on Sep-

tember 26, 1966 (RC Item 7). The Order permitting the appeal in forma pauperis was entered on October 13, 1966, and the Notice of Appeal, which was lodged on September 26, 1966, was filed on October 13, 1966 (RC Items 7, 8 and 9).

This appeal is pursuant to 28 U.S.C.A., §1291.

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II. STATEMENT OF FACTS

Elwyn Harder, business manager and secretary-treasurer of Bob Brewer Ford of Phoenix, Arizona, found two Ford Thunderbird automobiles missing the morning of May 11, 1966, from their car lot (RT 31 L 13 to 32 L 8). Harder identified Exhibits 1 and 2 as the manufacturer's statement of origin for the two Thunderbirds (RT 32 L 15-22). One Thunderbird, a pink one, was recovered in Sonoyta, Mexico, and the other, a gray one, in Gila Bend, Arizona (RT 35 L 1-8).

Melendez Olivas, through an interpreter, testified that Nero and Stevenson came to his garage in Sonoyta, Sonora, Mexico, driving a metallic pink Ford Thunderbird, and tried to sell him two tires in exchange for \$10.00 and two old tires (RT 44 L 8 to 46 L 6). Olivas took them to the Limon Gas Station, and Nero and Stevenson then offered to sell Olivas the car itself if Olivas could find a buyer (RT 46 L 12-23) for \$600.00 (RT 47 L 1).

Ramon Figueroa Medina, Chief of Police, Sonoyta, Sonora, Mexico, testified he saw them at the Limon Gas Station in Sonoyta, Sonora, Mexico, in the company of Melendez Olivas (RT 56 L 17 to 58 L 25). He took them into custody

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and held the Thunderbird (RT 63 L 22 to 64 L 14).

Government's counsel asked to approach the bench and out of the hearing of the jury, stated the next witness was a Maricopa County Deputy Sheriff who had recovered a gray 1966 Ford Thunderbird, with its motor burned out, in Gila Bend, Arizona, and that Gila Bend was on the route from Phoenix, Arizona, to Sonoyta, Sonora, Mexico (RT 72 L 22 to 73 L 5). Since defense counsel objected the evidence was not offered (RT 73 L 8 to 74 L 3).

Nero testified in his own defense and stated he met Stevenson in Phoenix, Arizona, on the night of May 10, 1966, and they met a Mexican-American gentleman by the name of Tony Perez, who offered them a ride to Mexico (RT 84 L 10 to 85 L 16). They arrived at Sonoyta, Sonora, Mexico, on the morning of May 11, 1966, in a dark blue Ford, not a Thunderbird (RT 86 L 14 to 87 L 11).

They went to a bar and started drinking, and they lost Tony Perez (RT 87 L 14-16). They looked for him and found a 1966 Thunderbird with Arizona license plates in front of a bar (RT 87 L 16-24). They went in the bar and found a stranger who said he owned the Thunderbird (RT 87 L 25 to 88 L 4). They asked him for a ride, but he had no money either (RT 88 L 4-6). Nero suggested to try and sell the tires and the stranger agreed (RT 88 L 6-25). Nero and Stevenson took the car and went to Olivas' establishment and tried to sell the tires (RT 89 L 1-7). Nero denied trying to sell the car (RT 89 L 8-11). He stated he didn't understand that Figueroa asked him for papers to the car (RT 89 L 21-24). Nero was impeached by the prior conviction of a felony (RT 96 L 24).

Trial counsel made an offer of proof by Nero testifying

he was taken into custody in Sonoyta and taken to the port of entry at Lukeville, Arizona, and delivered into the custody of Maricopa County Deputy Sheriffs and transported from Lukeville through Ajo to Gila Bend, and from Gila Bend to Phoenix, Arizona (RT 114 L 17-19). The charges were dismissed after two hearings and they were turned over to a Federal Marshal. They were supposed to have had a preliminary hearing on June 17, 1966, but the Indictment superseded it (RT 114 L 20 to 115 L 4).

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III.
OPPOSITION TO SPECIFICATION
OF ERRORS RELIED ON

Appellants were deported by the Republic of Mexico as undesirable aliens and were taken into custody by State of Arizona officials, and there were no extradition proceedings.

IV.
SUMMARY OF ARGUMENT

1. There was no evidence of an extradition proceeding by the United States of America in the Republic of Mexico.
2. The Motion to Dismiss was not made timely.

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V.
ARGUMENT

1. There was no evidence of an extradition proceeding by the United States of America in the Republic of Mexico.

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The record made by the Appellants consists of their oral Motion to Dismiss (RT 4 L 12 to 5 L 6), and Appellants' assumption it was done by extradition (RT 6 L 1-4). At the close of the case the Appellants offered the testimony of Nero (RT 111 L 6 to 112 L 11) to the effect that he was escorted to the Border at Lukeville on May 11, 1966, in handcuffs by Mexican officials; at the Border American officials put handcuffs on them and escorted them to Phoenix, via Ajo and Gila Bend, Arizona.

The right of a sovereign nation, such as the Republic of Mexico, to deport undesirable aliens is well recognized. Here in the United States of America it is done by voluntary departure and by deportation proceedings. (See 8 U.S.C.A., §1252, for deportation of aliens from the United States of America, and 8 U.S.C.A., §1254(f), for voluntary departure of aliens from the United States of America.)

Appellants cite *Glucksman v. Henkell*, (1910), 221 U.S. 508, as authority for the proposition that "formalities of extradition are, however, many times waived by the countries which have treaties." In the *Glucksman* case there were documents accompanying *the demand* for Glucksman.

In the case herein, there was no evidence of a demand by the United States of America for Nero and Stevenson much less documents from the State (Maricopa County) even in their offer of proof.

The quotation from *Terlinden v. Ames*, (1902), 184 U.S. 270, in Appellants' Brief on page 7 is from page 289 of the Opinion and sets out what appears to be a complete sentence. The sentence, however, is as follows:

"Extradiction may be sufficiently defined to be the surrender by one nation to another of an individual

accused of an offense outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, *demand his surrender.*" (Emphasis supplied)

There being no evidence of a demand for their surrender (much less was there one in fact), it is respectfully submitted there was no evidence of an extradition.

In *Dominguez v. State* (Tex. Crim. Ct. of Apps. 1921), 234 S.W. 79, 18 ALR 503, the defendant, a Mexican citizen, was seized in Mexico by American soldiers pursuing raiders. He was not a raider and was released by American soldiers to the Texas Rangers and charged with murder. The defendant in that case, in a preliminary plea, asserted want of jurisdiction over his person. The Texas Court held there could be no jurisdiction of the defendant until he voluntarily submitted himself to the jurisdiction of the Court or until the Mexican Government consented to it, since the defendant was a Mexican. (Under the Treaty, the Mexican Government has the discretion when the defendant is a Mexican citizen—see 18 ALR at p. 508).

Furthermore, *assuming for the purpose of argument* the Arizona State Authorities had illegally secured the Appellants from Mexico, it is respectfully submitted there would still be jurisdiction of the Court to try them.

"§381. Right to try person brought within jurisdiction illegally.

"Where a person accused of a crime is found within the territorial jurisdiction wherein he is charged, and is held under process legally issued from a court of that jurisdiction, neither the jurisdiction of the

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court nor the right to put him on trial for the offense charged is impaired by the manner in which he was brought from another jurisdiction, whether by kidnapping, illegal arrest, abduction, or irregular extradition proceedings." 21 Am. Jur. 2d, 401.

Cited as authority for this proposition is *Frisbie v. Collins*, (1952), 342 U.S. 519, 96 L.Ed. 541, 72 S. Ct. 509, rehearing denied 343 U.S. 937, 96 L.Ed. 1344, 72 S.Ct. 768.

2. The Motion to Dismiss was not timely made.

Nero and Stevenson were appointed counsel on July 18, 1966. Not until the morning of trial did they attempt to raise the issue. The Court held it was not timely made (RT 17 L 7-10).

In 21 Am. Jur. 2d 400, §379, source of jurisdiction; consent; waiver, it is stated:

"... But jurisdiction of the person of the defendant may be acquired by consent of the accused or by waiver of objections. If he fails to make his objection in time, he will be deemed to have waived it. Such an objection is also waived by pleading not guilty and going to trial. The accused cannot raise the question for the first time in the Appellate Court."

See also *Ford v. United States*, (1926), 273 U.S. 593, at p. 606, 71 L.Ed. 793, 47 S.Ct. 531.

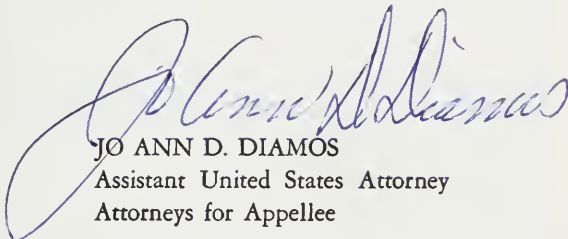
VI. CONCLUSION

It is respectfully submitted there was no evidence of an extradition of the Appellants by the United States of Amer-

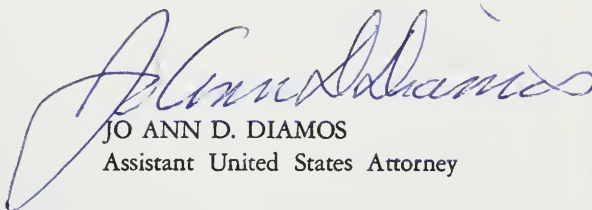
ica, and, further, the Motion to Dismiss was not timely made, and, therefore, jurisdiction over their persons was waived by Appellants.

Respectfully submitted,

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For the District of Arizona


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I certify that, in connection with the preparation of this Brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing Brief is in full compliance with those rules.


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Three copies of the within Brief of Appellee mailed this

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